

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KAZZIM COOPER,

Petitioner,

-v.-

MICHAEL LAPRA,

Respondent.

18 Civ. 9405 (KPF)

**ORDER**

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Petitioner's letter, dated May 18, 2021, requesting that the Court reinstate his petition (Dkt. #37), and Respondent's letter in opposition (Dkt. #38). Petitioner's request is DENIED because Petitioner has not yet exhausted his state remedies as required by 28 U.S.C. § 2254(a).

In order to exhaust his state remedies, "the prisoner must 'fairly present' his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim." *Baldwin v. Reese*, 541 U.S. 27, 29 (2004). In New York, a petitioner is "entitled to one (and only one) appeal to the Appellate Division and one request for leave to appeal to the Court of Appeals[.]" *Aparicio v. Artuz*, 269 F.3d 78, 91 (2d Cir. 2001) (citing N.Y. Crim. Proc. Law § 450.10(1); N.Y. Court R. § 500.10(a)). Petitioner has requested leave to appeal to the Court of Appeals but that request has not yet been decided. Accordingly, Petitioner has not yet exhausted his state Court remedies and his request must be denied.

Furthermore, The Court dismissed Petitioner's petition without prejudice in this case. (Dkt. #30). Therefore, once Petitioner has exhausted

his state Court remedies, the appropriate procedure for Petitioner to seek relief is to file a new petition for writ of habeas corpus pursuant to 20 U.S.C. § 2254, and not to seek to reopen this case.

The Clerk of Court is directed to mail a copy of this Order to Petitioner.

SO ORDERED.

Dated: May 20, 2021  
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

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KATHERINE POLK FAILLA  
United States District Judge